

HANDSHAKE PARTNERSHIP AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

THE KENTUCKY CHAPTER OF THE AMERICAN CHESTNUT FOUNDATION

KENTUCKY DIVISION OF FORESTRY, EASTERN DISTRICT

KNOTT COUNTY CREEKS AND STREAMS PRIDE

KENTUCKY DEPARTMENT OF FISH AND WILDLIFE RESOURCES

This agreement, entered in this day of Feb. 5, 2014 by and between the Department of the Army (hereinafter the "Government"), represented by the Commander, US Army Engineer District Louisville, and the Kentucky Chapter of the American Chestnut Foundation (hereinafter the "KYTACF" or "Partner 1"), represented by its President, and Kentucky Division of Forestry (hereinafter the "KYDF" or "Partner 2") represented by Forest Ranger James Madden, and Knott County Creeks & Streams/PRIDE (hereinafter the "Knott County PRIDE" or "Partner 3") represented by its President, and Kentucky Department of Fish and Wildlife Resources (hereinafter the "KYFW" or "Partner 4") represented by Chris Garland, Assistant Director, KY Wildlife Division.

WITNESSETH, THAT:

WHEREAS, the Government manages land and waters at the Carr Creek Lake Project which include environmental stewardship opportunities for the public, and

WHEREAS, the Kentucky Chapter of the American Chestnut Foundation (KYTACF), Kentucky Division of Forestry (KYDF), Knott County Creeks & Streams/PRIDE (Knott County PRIDE) and Kentucky Department of Fish and Wildlife Resources (KYFW) will increase sustainability of natural resources and educational opportunities for the public and

WHEREAS, the KYTACF, KYDF, Knott County PRIDE and KYFW is interested in promoting and assisting the Government in implementing a two-line genetic breeding orchard and has agreed to partner in the long term care and improvements of the project, and

WHEREAS, it is mutually beneficial to the Government and KYTACF, KYDF, Knott County PRIDE and KYFW to work cooperatively to make the two-line genetic breeding orchard program available to the public, and

WHEREAS, the KYTACF in order to assist the Government in this program has voluntarily agreed to pay a portion of the costs by providing in-kind services and donations of materials and seeds, and

WHEREAS, the KYDF in order to assist the Government in this program has voluntarily agreed to pay a portion of the costs by providing in-kind services, forest management techniques and

WHEREAS, the Knott County/PRIDE in order to assist the Government in this program has voluntarily agreed to pay a portion of the cost by providing in-kind services, volunteer labor and purchase of interpretive signage and

WHEREAS, the KYFW in order to assist the Government in this program has voluntarily agreed to pay a portion of the cost by providing in-kind services, technical expertise, consulting and orchard maintenance and

WHEREAS, Section 225 of the Water Resources Development Act of 1992, PL, 102-580. (Oct 31, 1992), authorizes the Secretary of the Army to accept contributions from the KYTACF, KYDF, Knott County PRIDE, KYFW and apply those to the two-line genetic breeding orchard program (hereinafter the "Program"), and

WHEREAS, the Government and KYTACF, KYDF, Knott County PRIDE and KYFW have the full authority and capability to perform as hereinafter set forth and intend to cooperate in financing and cost sharing in accordance with the terms of this agreement:

NOW THEREFORE, the Government and KYTACF, KYDF, Knott County PRIDE and KYFW agree as follows:

ARTICLE 1 – DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

- a. The term "Program" shall mean the following aspects of the two-line breeding orchard program, for partnership purposes: install and maintain a two genetic line breeding orchard, protective fencing around the orchard and provide a slow drip irrigation system to meet the needs for watering.
- b. The term "total program costs" shall mean all costs incurred by the Government and KYTACF, KYDF, Knott County PRIDE and KYFW directly related to implementation of the program.
- c. This agreement in no way restricts the Government from participation in similar activities or arrangements with, or accepting contributions from, other public and private agencies, organizations, and individuals.
- d. All donated property, facilities and improvements placed on Government land as well as any work accomplished under this agreement shall become the property of the Government.

ARTICLE II – OBLIGATIONS OF THE PARTIES

- a. The Government, subject to and using funds appropriated by the Congress of the United States (hereinafter the “Congress”), and using funds provided by the KYTACF, KYDF, Knott County PRIDE and KYFW shall implement the Program, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. The award of contracts, modifications or change orders by the Government, and performance of any work on the Program begun by the Government (whether the work is performed under contract or by the Government personnel) shall remain exclusively within the control of the Government.
- b. The Government shall provide: overall project guidance and supervision to any and all volunteers who work in maintaining the orchard. The Corps will procure all equipment and supplies through micro-purchase and other contracting services to accomplish work task and oversee execution of the work. The Corps will coordinate meetings with technical staff from KYTACF, KYDF, Knott County PRIDE and KYFW on the design and purchase of educational exhibits.
- c. The KYTACF shall provide in-kind services through technical expertise from scientists across the Eastern United States to support the planning and guidance of the two genetic line breeding orchard. Specifically, the KYTACF will provide essential guidance throughout the planting, maintenance and harvest processes. The KYTACF will also supply seeds and seedlings for initial and future plantings, up to the amount committed to in the handshake agreement. The KYTACF will provide material such as brochures and fact sheets that highlight the work of KYTACT.
- d. The KYDF shall provide in-kind services through technical expertise from foresters and forest rangers. Specifically, the KYDF will provide essential guidance throughout the planting, maintenance and harvest processes. The KYDF will conduct monthly inspections of all planted trees and monitor for presents of pests and diseases and shall advise proper control/treatment for pests and diseases.
- e. The Knott County PRIDE shall provide in-kind services through volunteer labor to support the initial planting and routine orchard maintenance. Specifically, the Knott County PRIDE will provide volunteer labor and purchase interpretive signage.
- f. The KYFW shall provide in-kind services through technical expertise from public land biologists. Specifically, the KYFW will provide essential guidance throughout the planting, maintenance and harvest processes. The KYFW will assist with site preparation and orchard maintenance.

- g. The Government shall perform a final accounting to determine the contributions provided by all parties to this agreement and to determine whether each has met its obligations under paragraphs b, c, d, e and f of this Article.
- h. No Federal funds may be used to meet KYTACT's, KYDF's, Knott County PRIDE's and KYFW's share of program costs under this Agreement.

ARTICLE III – METHOD OF PAYMENT

- a. The Government shall maintain current records of contributions provided by KYTACF, KYDF, Knott County PRIDE and KYFW and a current projection of total project costs. At least quarterly, the Government shall provide KYTACF, KYDF, Knott County PRIDE and KYFW with a report setting forth all contributions provided to date and current projection of total project costs, of the components of total project costs, of each party's share of the total project costs, and of KYTACF, KYDF, Knott County PRIDE and KYFW contributions required in accordance with Article II. c, d, e and f. of this agreement. On the effective date of the Agreement, total program costs are projected to be \$36,285.00, and the KYTACF contribution required under Article II.c. of this Agreement is projected to be \$7,500.00 of in-kind services and donated material. On the effective date of the Agreement the KYDF contribution required under Article II. d of this Agreement is projected to be \$6,000.00 of in-kind services and donated material. On the effective date of the Agreement the Knott County PRIDE contribution required under Article II. e of this Agreement is projected to be \$1,285.00 of in-kind services and donated interpretive signage. On the effective date of the Agreement the KYFW contribution required under Article II. f of this Agreement is projected to be \$6,000.00 of in-kind services. Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the KYTACF, KYDF, Knott County PRIDE and KYFW.
- b. The KYTACF, KYDF, Knott County PRIDE and KYFW, shall provide their contributions required under Article II. c, d, e and f. of this Agreement in accordance with the following provisions: At the time of the execution of this agreement, it is anticipated that the Partners will make their contributions under this Agreement in the form of in-kind services. However, in the event it becomes necessary for any or all Partners to make a contribution of funds to meet its obligation, the Partner shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, LOUISVILLE" to the Government at the address identified in Article X of this Agreement. The Government shall draw from the funds provided by the Partner such sums as the Government deems necessary to cover: (a) the Partner's proportionate share of the Government's financial obligations incurred prior to the commencement of the period of construction; and (b) the Partner's proportionate share of the Government's contractual and in-house financial obligations as they are incurred during the period of construction. In the event the Government determines that the

Partner must provide additional funds to meet its obligation, the Government shall notify the Partner of the additional funds required. Within 60 calendar days thereafter, the Partner shall provide the Government with a check for the full amount of the additional required funds.

1. In the event the final accounting shows that the total contribution provided by any Partner is less than its required share of total project costs, the Partner shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Partner's required share of the total project cost.
2. In the event the final accounting shows that the total contribution provided by any Partner exceeds its required share of the total project costs, the Government shall, subject to the availability of funds, refund the excess to the Partner no less than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund excess to the Partner, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE IV – DISPUTE RESOLUTION

As a condition precedent to any of the parties bringing any suit for breach of this Agreement, the party must first notify the other party or parties in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the affected parties cannot resolve the dispute through negotiation, they may agree to mutually acceptable method of non-binding alternative dispute resolution with a qualified third party. The parties in dispute shall each divide all costs paid to the third party equally for any and all costs for the services provided by such a third party as such cost are incurred. The existence of a dispute shall not excuse the Government nor KYTACF, KYFD, Knott County PRIDE, KYFW from performance pursuant to this Agreement.

ARTICLE V – FEDERAL AND STATE LAWS

In exercise of their respective rights and obligations under this Agreement, the Government and KYTACF, KYFD, Knott County PRIDE, KYFW agree to comply with all applicable Federal and State laws and regulations including, but not limited to, Section 601 of Title VI of the Civil Rights Act of 1964, PL, 88-352 and the Department of Defense directive 5500-11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulations 600.7, entitled "Non-discrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE VI – RELATIONSHIP OF PARTIES

- a. In the exercise of their respective rights and obligations under this Agreement, the Government and KYTACF, KYFD, Knott County PRIDE, KYFW each act in an independent capacity and none are to be considered the officer, agent, or employee of the other.
- b. In the exercise of their respective rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights any of the other parties may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party or parties may have, or for violation of any law.

ARTICLE VII – OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise there from.

ARTICLE VIII – INDEMNIFICATION

KYTACF, KYDF, Knott County PRIDE, KYFW shall hold and save the Government free from all damages arising from services it performs or provides during the implementation of the Program, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX – TERMINATION OR SUSPENSION

- a. It at any time any Partner fails to fulfill its obligations under this Agreement, the District Commander shall terminate the Agreement or suspend future performance under this Agreement unless he/she determines that continuation of work on the Program is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Program.
- b. If the Government fails to receive annual appropriations in amounts sufficient to meet Program expenditures for the then-current or upcoming fiscal year, the Government shall so notify KYTACF, KYDF, Knott County PRIDE, KYFW and 60 calendar days thereafter either party(s) may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party(s) elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Partner(s) elect to terminate this Agreement.
- c. In the event that any party elects to terminate this Agreement pursuant to this Article, all parties shall conclude their activities relating to the Program and proceed to a final accounting in accordance with Article II of this Agreement.

- d. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with Article IX shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE X – NOTICES

- a. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or by telegram, or mailed either by first-class, registered, or certified mail, as follows:

If to the KYTACF: KY Chapter

Lynn Garrison
The American Chestnut Foundation
1620 Mulberry Pike
Eminence, Kentucky, 40019

If to the KYDF: Kentucky Eastern Division of Forestry

James Madden
232 Birch Street
Hazard, Kentucky, 41701

If to the Knott County PRIDE: Sharon Hall

PO Box 1500
Hindman, Kentucky, 41822

If to the KYFW: Kentucky Department of Fish and Wildlife Resources

Scott Freidhof
255 Rodburn Hollow Road
Morehead, Kentucky, 40351

If to the Government: Carr Creek Lake Project Manager

U.S. Army Corps of Engineers
843 Sassafras Creek Road
Sassafras, Kentucky, 41759-8806

- b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.
- c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XI – CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Louisville District.

Kentucky Chapter of the American Chestnut Foundation

BY: Lynn Garrison
TITLE: President, Kentucky Chapter of the American Chestnut Foundation
SIGNATURE: *Lynn Garrison* DATE: 23 January 2014

Kentucky Division of Forestry (Eastern District)

BY: James Madden
TITLE: Forest Ranger, Kentucky Division of Forestry, Eastern District
SIGNATURE: *James Madden* DATE: 30 Dec 13

Knott County Creeks and Streams/PRIDE

BY: Sharon Hall
TITLE: President, Knott County Creeks and Streams
SIGNATURE: *Sharon Hall* DATE: 30 Dec 2013

Kentucky Department of Fish and Wildlife Resources

BY: Chris Garland
TITLE: Assistant Director, KY Wildlife Division
SIGNATURE: *Chris Garland* DATE: 8 January 2014

Double click on spreadsheet to access data entry fields:

	Local Corps Office	Handshake Funds	Partner 1	Partner 2	Partner 3	Partner 4
Salaries	\$5,500	N/A	\$0	\$2,000	\$0	\$3,000
Travel	\$0	N/A	\$0	\$0	\$0	\$0
Materials and Supplies	\$500	\$7,000	\$2,500	\$0	\$50	\$0
Equipment Use	\$500	\$2,000	\$0	\$500	\$0	\$3,000
Funds Contributed	N/A	N/A	\$0	\$0	\$0	\$0
Personal Property	N/A	N/A	\$0	\$0	\$150	\$0
Volunteer	N/A	N/A	\$2,000	\$0	\$885	\$0
In-Kind Services	N/A	N/A	\$3,000	\$3,500	\$200	\$0
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$6,500	\$9,000	\$7,500	\$6,000	\$1,285	\$6,000
Share of Total Cost	17.9%	24.8%	20.7%	16.5%	3.5%	16.5%

	Partner 5	Partner 6	Partner 7	Partner 8	Partner 9	Total
Salaries	\$0	\$0	\$0	\$0	\$0	\$10,500
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Materials and Supplies	\$0	\$0	\$0	\$0	\$0	\$10,050
Equipment Use	\$0	\$0	\$0	\$0	\$0	\$6,000
Funds Contributed	\$0	\$0	\$0	\$0	\$0	\$0
Personal Property	\$0	\$0	\$0	\$0	\$0	\$150
Volunteer	\$0	\$0	\$0	\$0	\$0	\$2,885
In-Kind Services	\$0	\$0	\$0	\$0	\$0	\$6,700
Other (explain below)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$36,285
Share of Total Cost	0.0%	0.0%	0.0%	0.0%	0.0%	100%

US Army Corps of Engineers, Louisville District

BY: Luke T. Leonard

TITLE: Colonel, Corps of Engineers

SIGNATURE: ^{Commanding}


DATE: 5 Feb 14